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**REMARKS**

This response is to the action mailed in the above-referenced case on 09/11/2007.

**Merit rejection under §35 U.S.C. 103(a)****Examiner's rejection:**

Claims 31-52 are rejected under 35 U. S. C. 103(a) as being unpatentable over Eldering (US 6,820,277) further in view of Saylor et al. (US 6,707,889).

Regarding claims 31 and 42, Eldering teaches receiving advertisements from participating advertisers at an advertisement managing server, and storing the advertisements associated with the advertisers in a data repository (col. 11 lines 20-47); receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements determining whether the bid data is satisfactory to one or more of the participating services (col. 8 line 63 to col. 9 line 10); and upon the bid data being determined satisfactory, associating the bid data and identity of the accepting services with the appropriate advertisements in the data repository (see col. 9 lines 4-11); Eldering does not teach and upon receiving notice of a call to one of the accepting telephone services, retrieving an appropriate ad accepted by that telephone service, and providing the retrieved advertisement to the telephone service to be played as audio to the caller. Saylor teaches generating revenue by charging advertisers for including their advertisement content with the Vpage and so users may access the system for free of charge. Saylor teaches the charge may be a flat fee for a period of time, a fee for each user for whom the VAd is played or otherwise (see col. 7 lines 8- 51). Therefore, is would have been obvious to one of ordinary skill in the art at the time of the invention to allow the advertisers of Saylor to bid for the placement of advertisement, as in Eldering so the advertisers of Saylor can bid for the highest price they are willing to pay for the ad placement and the service provide can select the advertiser with the highest bidder.

Regarding claims 32 and 43, Eldering teaches determining that the bid data is not satisfactory to any one of the participating services, notifying the participating advertiser

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of the determination, receiving second bid data from the participating advertiser over the network, determining whether the second bid data is satisfactory, and repeating the determining cycle until the bid data is satisfactory, or until the advertiser stops bidding (see col. 8 line 63 to col. 9 line 8).

Regarding claims 33, 34, 44 and 45 both Eldering and Saylor teaches wherein the bid data includes a financial arrangement regarding payment for playing the audio advertisement, wherein the financial arrangement includes revenue sharing (see Eldering abstract, col. 2 lines 50-57, Saylor fig. 14 col. 35 lines 23-60):

Regarding claims 35-37 and 46-48, both Eldering and Saylor teaches wherein advertisements retrieved from the data repository are selected according to a user profile of a caller to which the advertisement may be played or displayed; wherein selection is made at least in part according to balanced ad usage rules; wherein selection is made at least in part according to profit rules that are used to determine which stored audio advertisement to retrieve (see Eldering col. 2 lines 25-39, col. 11 line 39 to col. 12 line 10, see Saylor col. 7 line 60 to col. 8 line 17).

Regarding claims 38, 39, 49 and 50 Saylor teaches wherein one or more of the stored advertisements are audio files; wherein one or more of the stored advertisements are Voice XML files to be inserted into voice applications to be executed by one of the telephone services (see col. 7 line 35 to col. 8 line 40). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide voice or voice xml as in Saylor in the intended purpose of providing an audio advertisement in telephone system.

Regarding claims 40, 41, 51 and 52, Eldering teaches location identifiers to locate an audio file on a server in the network are stored in a data repository and the identifiers are used to retrieve the audio file storing a plurality of audio advertisements in a database; usage data is for their use in formulation of bid data (see col. 7 line 35, col. 8 line 54).

**Applicant's response:**

Applicant herein amends independent claims 31 and 42 to positively recite a

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unique ability of applicant's invention to associate data about the caller, the telephone system, the advertisements and the bids to pick the best ad to provide to the caller in order to maximize profits for the advertising management system. Claims 37 and 48 are herein canceled. Applicant presents claim 31, as amended, below:

31. A method for advertising to users of telephone services, comprising the steps of:
- receiving advertisements from participating advertisers at an advertisement managing server, and storing the advertisements associated with the advertisers in a data repository;
  - receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements to callers to one or more of participating telephone services;
  - determining whether the bid data is satisfactory to one or more of the participating telephone services; and
  - upon the bid data being determined satisfactory, associating the bid data and identity of the accepting telephone services with the appropriate advertisements in the data repository; and
  - upon receiving notice of a call to one of the accepting telephone services, associating data about the caller, the telephone service, the available advertisements and the received bids to retrieve an appropriate ad accepted by that telephone service to best maximize profits for a host of the managing server, and providing the retrieved advertisement to the telephone service to be played as audio to the caller.

Applicant points out that Eldering fairly teaches an advertising system for video ads (on cable TV) that includes an auction mechanism for specified ad slots with desired demographics targeted to viewers. Eldering fails to teach or suggest receiving telephony calls accessing telephone services wherein an ad is provided to the telephony services provider at that time and passing the ad to the caller. Saylor teaches a system of VBooks consisting of VPages, wherein one means of generating revenue for Vpages is to show

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ads to users who access the VPages.

Applicant argues that Eldering and Saylor, either singly or in combination fail to teach; "...upon receiving notice of a call to one of the accepting telephone services, accesses specific processing rules which associate data about the caller, the telephone service, the available advertisements and the received bids, retrieves an appropriate ad accepted by that telephone service to best maximize profits for at least a host of the management server, and provides the retrieved advertisement to the telephone service to be played as audio to the caller."

Applicant's invention teaches that an advertising selection retrieval server 48 selects an audio ad based upon certain predetermined rules. The ad selection rules include: balanced ad usage rules, profit rules (e.g., revenue sharing rules), target customer profile rules, and other selection rules. The balanced ad usage rules ensure that audio ads are played at least a certain amount of times. The profit rules optimize the amount of earnings the operators of the present invention acquire for the playing of the audio ads. For example, the profit rules may indicate that a first audio ad be played more often than a second audio ad when the first audio ad's financial arrangement is based upon a profit-sharing arrangement, and the second audio ad's financial arrangement is a set fee arrangement. The target customer profile rules ensure that audio ads that fit a customer profile are played. For example, a jewelry-related audio ad is played for a customer who has requested jewelry-related information. Examples of other selection rules include accounting information (such as whether the advertiser is current in its payments to the operators), application service provider configuration, and content provider configuration.

Eldering merely teaches considering ad linking, wherein an availability module 104 identifies portions of data streams available for ad insertion and selects an ad based on demographics of a user or to match the ad with the content of the program (col. 8, lines 7-18; col. 10, lines 51-54). There is no teaching or suggestion in Eldering using rules to consider combined factors when selecting an ad for insertion such as the service, the user, the ad itself and the received bid in order to maximize profits for the system

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provider.

Saylor also fails to access rules which consider the individual user, the ad, the service and profit structure when selecting ads for insertion in Vpages. Saylor is limited to teaching the VAd may be selected based on the content requested by the user. (col. 7, lines 40-42).

Applicant's invention, as claimed, provides a much more intelligent system for advertising in a telephone service system than previously available in the art.

The Examiner states; " regarding claims 35-37 and 46-48, both Eldering and Saylor teaches wherein advertisements retrieved from the data repository are selected according to a user profile of a caller to which the advertisement may be played or displayed; wherein selection is made at least in part according to balanced ad usage rules; wherein selection is made at least in part according to profit rules that are used to determine which stored audio advertisement to retrieve (see Eldering col. 2 lines 25-39, col. 11 line 39 to col. 12 line 10, see Saylor col. 7 line 60 to col. 8 line 17).

Applicant respectfully disagrees with the Examiner's above statement. Eldering's teaching in col. 2, lines 25-39 is specifically restricted to demographics of the user and col. 11 line 39 to col. 12 line 10 of Eldering teaches considering user profile and bandwidth requirements for an ad insertion. Saylor's teaching in col. 7, line 60 to col. 8, line 17 teach that a user may register with the service, providing phone number, credit card number, etc. and their history may be tracked in order to assist with purchase transactions as a result of the service or ad offered. Applicant points out that there is absolutely no teaching in the portions of Eldering and Saylor, as referenced by the Examiner, to teach balanced ad usage or using rules to maximize profit in ad selection, as claimed.

Applicant has clearly demonstrated above that claim 31, as amended, is patentable over the art of Eldering and Saylor. Independent system claim 42 follows the limitations of system claim 31 and is therefore patentable by the same reasoning as put forward for claim 31. Dependent claims 32-36, 38-41, 43-47 and 49-52 are patentable on their own merits or at least as depended from a patentable claim.

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**Summary**

It is therefore respectfully requested that this application be reconsidered, the claims be allowed, and that this case be passed quickly to issue. If there are any time extensions needed beyond any extension specifically requested with this amendment, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully submitted,  
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